



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

November 28, 1989

Mr. Jim Walsh  
Hairston, Walsh, Anderson,  
Underwood & Schulze, P.C.  
P.O. Box 2156  
Austin, Texas 78768

Dear Mr. Walsh:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 8123; this decision is OR89-404.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion H-436 (1974). The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Nixon-Smiley Consolidated Independent School District received a request for information about a former employee of the district, Mr. Robert McHaney. The district does not object to releasing the information but is concerned about violating Mr. McHaney's privacy rights. The information at issue relates to allegations of improper sexual contact with a student.

We have considered your claim regarding privacy and reviewed the documents at issue. Your request for an open records decision falls within a previous determination of this office, Open Records Decision No. 438 (1986), a copy of which is enclosed. For this reason, you must release the requested information.

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We note that the student's name has already been deleted from the records submitted for review. We confirm that section 3(a)(1) of the Open Records Act requires the deletion of the student's name. There is no legitimate public interest in the victim's identity. See also V.T.C.S. art. 6252-17a, §§ 3(a)(14), 14(e) (student records) 3(a)(1); Open Records Decision Nos. 430 (1985); 316 (1982) (polygraph examinations).

Finally, you seek confirmation that this information, which is held in your files by you as attorney for the school district, is subject to the Open Records Act. This is correct. See Open Records Decision No. 499 (1988).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-404.

Yours very truly,  
*Open Government Section* *GR*  
*of the Opinion Committee*  
Open Government Section  
of the Opinion Committee  
Prepared by Jennifer S. Riggs  
Chief, Open Government Section

JSR/le

Ref.: ID# 8123